



MM97-182

COUNTY COMMISSIONERS

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DEVELOPMENT SERVICES

October 28, 1997

Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

SUBJECT: Preemption of State and Local Zoning and Land Use Regulations on the Siting, Placement and Construction of Broadcast Station Transmission Facilities

Dear Honorable Commissioners:

Thurston County, Washington, Development Services Department, thanks you for providing this opportunity to submit our comments regarding this proposed rule. This type of Federal Rule making can have significant impacts to our citizens expectations and trust that all developments go through the local land use permitting process. If this preemption was for a national emergency, national defense or government project it would be understood by our citizens. However, this proposal appears to only benefit the petitioners, large private corporations.

The Washington State Growth Management Act requires all private, city, county and state projects to be processed through local review and approval procedures. In Thurston County this means compliance with our Comprehensive Plan, Zoning, Critical Areas Ordinance, Shoreline regulations, State Environmental Policy Act and Building and Health Codes. Thurston County fails to understand why these Corporations should be given a preemption from local land use regulations and process. Based upon our State and County time line regulations for process and action, any applicant with as much knowledge and resources as these Corporations have, should be able to plan their facilities in sufficient time for our review to meet the FCC deadlines.

A question that we would ask the Commission is how much involvement did the FCC have with local governments in setting up these two critical dates in 1999. Depending upon how many towers may be constructed in each City or County to serve the Market area, jurisdictions within Washington State should be able to process applications within a timely manner, but this might not mean approval of all applications, based upon consistency with local land use regulations. Thurston County has criteria for reviewing transmission towers and would be concerned if any reconstructed or new tower did not comply with our local regulations. If the Broadcasting (tower) industry is not sensitive to local concerns and land use regulations there could be strong public concerns and actions that would not serve the interests of the Industry, County or FCC. It is interesting to note that the Federal

Telecommunications Act of 1996 gives local jurisdictions review and approval authority for Cellular towers and other wireless telecommunication service. We can find no compelling reason why Broadcasting towers should not go through local review and approval as Cellular towers.

Thurston County staff are intrusted by our citizens to look at the long term consequences of development and to consider the impacts of a land use decision on people outside the immediate circle of the proponent and those who would directly benefit. Once environmental protection and community livability are sacrificed to expediency, they are not recoverable in the long, long range. It is for these reasons that the County protects the Community interests by implementing all of our development regulations.

Some of the issues that the County has concerns and what we would hear from our citizen's regarding this proposal are as follows:

- Impact to surrounding urban and rural properties
 - Visual, due to the size of these towers they cannot be screened and therefore create eyesores for miles.
 - Property values decrease and salability of property is impaired.
 - A tower is not a normal use to be found in rural or urban residential areas.
 - Adjacent property owners will have no input into siting or having their concerns considered.
- Land use issues that would not be met
 - County Comprehensive Plans have Policies for Transmitting facilities.
 - Character of the rural and urban areas could be drastically effected.
 - Livability of the area could be effected.
 - Citizen preference for land use in their areas would be violated.
 - Critical Areas Ordinance prohibits TV/Radio towers in certain areas to protect the Environment e.g. wetlands and their buffers and habitats.
 - State Environmental Policy Act mitigation measures will be avoided.
- Public Safety review at local level
 - Conflicts or effects on local 911 services or emergency communication system.
 - Building Code review and compliance
 - How FAA is involved when we have small private airfields that are not regulated by FAA.

Specific responses to the questions asked in the Rule Notice are as follows:

- II 4. This statement is true if applicants are not sensitive to the Community land use regulations and are not willing to work with the community.
- II 5. Thurston County does not believe the preemption rule has been justified when it only appears to serve big Corporations interests. Television service is already universally available to citizens, so there does not appear to be an emergency that would justify preempting all local land use and environmental regulations.
- II 6. In Thurston County the following time lines apply:
- To modify an existing facility with no change in height, building permit and administratively approved, 21 days would work.
 - All other changes in site, new facility or increased height would require a Special Use Permit and possibly environmental review. Once an application is complete, a decision would be issued within 120 days, which is final unless the decision is appealed to the Board of County Commissioners. Appeals are heard and a decision issued within 60 days.
- II 7. Thurston County has excepted this provision which is consistent with the Federal Telecommunication Act of 1996.
- II 9. We are opposed to this preemption rule as this type of development should follow all local land use rules, where the burden of proof rests with the applicant. Any appeals should start at the local level.
- III 12. We fail to see the linkage between frequency interference and local zoning and land use process for siting new facilities that would justify preemption rules.
- III 14. Delays would only occur in Thurston County if the applicants did not submit complete applications with required information.
- III 15. How do you provide an opportunity to the citizens to protect their interests if you provide no local review and approval process. Regarding the preemption for satellite dish antennas and amateur radio towers, these are for personal use and are small scale accessory uses to normal single family residences, and not analogous to large broadcast towers.
- III 16. We strongly object to the preemption of all broadcasting transmission facility construction from local land use regulations.

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- IV 19. New facilities and rebuilding existing sites would require a Special Use Permit (SUP). This type of permit requires a public hearing before our Hearing Examiner. From the time of complete application submittal, the Examiner's decision would be required within 120 days. Our SUP process for Cellular towers has consistently resulted in a decision within the 120 days.
- IV 20. We do not believe Thurston County land use regulations would impede the DTV build-out schedule.
- IV 21. We do not believe any type of transmission facility should be preempted from our local land use review and approval process.
- IV 22. Federal Regulations should not preempt local regulations intended for aesthetic purposes.
- IV 23. The time frames proposed are not reasonable. There should not be any automatic approval if the County fails to act within your time frames. Based upon our State Regulatory Reform Act 120 days from a complete application being submitted is a reasonable time for a decision to be issued. The only factor that we cannot control is how many new facility applications would be submitted at any one time, which could effect construction schedules. The FCC role should be to provide a forum to which parties can turn to for technical information and suggestions on resolving local disputes.

Thank you for the opportunity to comment on this proposal which could have major impacts to our County. Your thoughtful consideration of our concerns will be appreciated by the citizens of Thurston County.

Sincerely,



Fred Knostman
Planning Manager
Development Services Department

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cc: Judy Wilson, County Commissioner
Linda Hoffman, Chief Administrative Officer
Don Krupp, Development Services Director